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ISSIDORE BROWNE, *Gent.* - - Appellant.

The Right Hon. FRANCIS Lord Baron of
Athunry of the Kingdom of Ireland, and } Respondents.
DENNIS DALY, *Esq.* - - - }

The Appellant's CASE.

Articles of Inter-
marriage
dated Nov. 22.
1691.

ANDREW BROWNE late of *Gloves*, in the County of *Gallway* and Kingdom of *Ireland*, deceased (the Appellant's Father) upon his Intermarriage with *Eleanor Lynch* the Appellant's Mother, entered into and executed certain Articles of Agreement, bearing Date the 22d of *November*, 1691. between him the said *Andrew Browne* of the one Part, and *Thomas Lynch*, *Esq.*; the said *Eleanor's* Brother, of the other Part, whereby in Consideration of the said Marriage, and of a marriage Portion paid and secured, or agreed to be paid and laid out to the Uses of the said Marriage, it was agreed, That the said *Andrew Browne* should convey his Estate then in Possession, to the Use of himself and his Wife for Life, with Remainders to the Sons of that Marriage successively, in Tail-Male; and the said *Andrew Browne* having an antient and undoubted Right and Title to the Lands herein after-mentioned, further agreed and covenanted with the said *Thomas Lynch*, that if the said *Andrew Browne* should recover any Part of his antient Estate, he the said *Andrew Browne* would convey the same to the Use of himself for Life, with Remainders to the Sons of the said Marriage successively, in Tail-Male.

The Lands in
Question re-
covered

The said *Andrew Browne* in some Time after, upon the Foot of his said Title, obtained a Decree of the Court of *Exchequer* in *Ireland*, against one *Andrew Blake*, whereby he was decreed and restored to the Lands in Question, consisting of the following Denominations, viz. *Dumbane*, *Keilnegnock* and *Turlagh Garranes*, containing in the whole 300 Acres.

Ann 1^o Ann 2

By an Act of Parliament then made in *Ireland*, intituled, *An Act to prevent the further Growth of Popery*; all Papists or Persons professing the Popish Religion, are disabled and made incapable to buy any Real Estate of Freehold or Inheritance, either by themselves or in Trust for them; and all such Purchases to be made from and after the 24th of *March* then ensuing, are thereby made void and of none Effect.

Ann 8^o Ann 2

And by a subsequent Act of Parliament then made in that Kingdom, all such Purchases as aforesaid, made or to be made, by or in Trust for any Papist or Papists, contrary to the said former Act, may be sued for by any Protestant, in any of the Courts of Law or Equity of that Kingdom, as the Nature of his Case shall require; and the Plaintiff in such Suit, upon Proof that such Purchase was made in Trust for any Papist, or under any Confidence to or for any Papist or Papists, or for his or their Benefit or Advantage, by receiving the Rents, Issues or Profit thereof, shall obtain a Verdict and Judgment and a Decree thereupon, and recover the same, and be put in the Seizin or Possession thereof, and shall hold the same according to the Estate which such Papist or Papists had or should have had therein, had he, she or they been qualified to purchase, hold or enjoy the same.

And in order to encourage and advance the Growth of the Protestant Religion and Interest in that Kingdom, and that no Child or Children of Popish Parents might be deterred from being educated in or embracing the Protestant Religion, for fear of being cast off or disinherited by such Parents, or that for want of a fitting Maintenance or future Provision, they might be deterred or with-held from owning and professing the Protestant Religion, in such Case by the said Acts of Parliament, upon Application made to the Court of *Chancery*, the Lord Chancellor hath Power to assign a fitting Maintenance and Provision for such Protestant Child; and in case the Eldest Son and Heir of such Popish Parent shall become a Protestant, it is provided by the said Acts, That such Parent shall be only Tenant for Life of all the real Estate, whereof such Popish Parent shall be then seized in Fee Tail or Fee Simple, and the Reversion in Fee shall be vested in such eldest Son, being a Protestant.

The said *Andrew Browne* and *Eleanor* his Wife, being strict Papists, educated their Children in the Popish Religion; but the Appellant being their eldest Son, and Heir Apparent (and being by his Conversation with Protestants) convinced of the Errors of the Popish Religion, and having good Reasons to hope that the Laws of *Ireland* had secured him against his said Father's Resentment on that account, did, in the Year 1714, being then little more than 16 Years old, declare his Intentions to become a Protestant, whereof his said Father being informed, he did resolve, and on that Account, was determined to strip him of the Benefit of the said Marriage Articles, and also of any Advantage which he might have under the said Acts of Parliament; and for that Purpose sent for *James Canane* and *Owen Flannery*, Two obscure Popish Labourers, who were Servants or Under-Tenants to the Respondent *Daly*, and told them, That in regard he perceived that his eldest Son (the Appellant)

pellant) did declare his Intentions of becoming a Protestant, he was resolved to deprive him of the Inheritance of the Lands in Question, and for that Purpose fictitiously caused them to purchase or buy from him the said Lands (as was pretended) for the Use of the said Respondent *Daly*, a Protestant, and gave them a Piece of Money, which was to be return'd to him, as a Consideration to bind the said pretended Sale, and thereupon, as it is alledg'd, he executed a Conveyance, which was witnessed by the said *Canane* and *Flannery*, whereby it is pretended, That some short Time before the Appellant's becoming a Protestant, he the said *Andrew Browne*, for and in Consideration of the Sum of 600 *l.* conveyed the said Lands herein before-mentioned to the Respondent *Dennis Daly* and his Heirs, and he gave out and pretended, that in order to pay his Debts, and provide for his younger Children, he had absolutely, and for valuable Consideration, sold the same to the said *Dennis Daly*; whereas it will plainly appear from the Proofs in this Cause, and from the strongest Circumstances with which Transactions of this Nature can be attended, that the said Conveyance to the Respondent *Daly* was fictitious and fraudulent, and was executed by the Appellant's said Father, in Revenge for the Appellant's quitting the *Romish* Religion, contrary to his Father's Desire and Inclination; thereby to prevent the Appellant's enjoying any Interest therein, and to lessen his own visible Estate, that the Appellant might recover the less Maintenance, and with Intent to preserve the same for himself and for his younger Children of the *Popish* Religion.

Oct. 1. 1715. The Appellant being cast off and wholly neglected by his Father, was necessitated to Exhibit his Bill in the Court of *Chancery* of *Ireland*, in *forma Pauper'* against his said Father and the Respondent *Daly*, and thereby prayed to be decreed to a fitting Maintenance, suitable to his said Father's Ability, and to be relieved against the said fraudulent Sale; where, after a tedious Prosecution of several Years, he was by the late Lord *Middleton*, then Lord Chancellor of *Ireland*, decreed only to a Maintenance of Ten Pounds *per Annum*, of which he to this Day never received one Shilling; and as to the said pretended Sale, he was wholly disappointed therein, by the Contrivance of the Respondent *Daly*, who to put Difficulties upon the Appellant, conveyed the Premises (pending the said Suit) to the Respondent the Lord *Athunry*, who had Notice of the Suit then depending, and of the Title thereby claim'd by the Appellant, and in order effectually to cover the Trust, procured the Appellant's said Father to admit before the Master, to whom it was referred, to take an Account of the Real and Personal Estate of the said *Andrew Browne*; that he the said *Andrew* had received from the Respondent *Daly* the Sum of 550 *l.* in Consideration of the said Purchase, and insisted, That the said *Andrew Browne* had paid the Same, or the greatest Part thereof in discharge of his Debts, and accordingly procured a Report from the Master to that, or the like Effect, by means whereof, and of the great Distress and Hardships which the Appellant, on account of his Conversion, had undergone, he was disabled from proceeding further in that Suit.

In the Year 1720, the Appellant being come of Age, and having then been informed of the several Frauds and Circumstances relating to the said fictitious Sale, he thereupon Exhibited his Bill in the Court of *Exchequer* in *Ireland*, against his said Father the said *Andrew Browne*, the Respondents *Dennis Daly* and Lord *Athunry*, founded on the said Acts of Parliament, to be decreed to the said Lands as a Protestant Discoverer, and praying general Relief; to which the Defendants put in their Answers, and Issue being joined, Witnesses examined, and Publication passed, and the Cause ready for hearing, the said *Andrew Browne*, on or about the 5th of *February* 1722, died, by whose Death the Appellant is become wholly destitute of any Support whatsoever, the said *Andrew Browne* his Father, having in his Life-time, disposed of his Personal Estate to his younger Children, who are all Papists, and all the said *Andrew Browne's* Real Estate, except the Lands in Question being settled on the said *Eleanor* for Life for her Jointure.

The Appellant having soon after his said Father's Decease, got into his Hands the said Marriage Articles, which had been amongst the said *Andrew Browne's* Papers, and to which he had been till then an intire Stranger, did thereupon prefer a Supplemental Bill against the Respondents *Daly* and Lord *Athunry*, setting forth the Original Bill, and the said Proceedings had thereupon; and also the said Articles, by which he prayed that the said Supplemental and Original Bill might be deemed as one and the same, and to be decreed to the said Lands, as well on the Foot of the said Articles, as on his said Title founded on the Popery Acts, to which the said Defendants having put in their Answers, Issue being joined, Witnesses examined, and Publication passed, the said Cause on the said Original and Supplemental Bill was heard on the 10th Day of *November* 1726, at which Time the Respondents, for Delay, made Default, and did not appear, and a conditional Decree was made for the Appellant against the Respondents.

Conditional
Decree, Nov.
10. 1726.

That the Appellant should hold and enjoy the said Estate as the first Protestant Discoverer; that the Respondents should account with the Appellant for the Profits of the said Lands, from the Time of the said Conveyance to the said *Dennis Daly*, and that they should pay the Appellant his Costs of this Suit.

Decree Feb. 6
& 8. 1726.

But upon the Respondents shewing Cause against the said Decree, the said Cause was again heard on the 6th and 8th Days of *February* 1726, and thereupon the Court was pleased to Order and Decree, That the Appellant should be and was thereby at Liberty to examine the Respondent *Daly*, touching the Reality of his Purchase, what Sum was paid, how and when, and to exhibit proper Interrogatories concerning the obtaining thereof, with all its Circumstances, as

also

also to exhibit the like Interrogatories to the said Daly touching the Sale made to the Respondent the Lord Athunry, and on Return of the Answer to such Interrogatories, such further Order should be made as should be fit; and it was further ordered, That the Appellant's Supplemental Bill should be and was thereby dismissed with Costs.

Respondents
Petition for
Re-hearing.
Re-hearing,
April 26 & 27,
1727.
But the Respondents (tho' the Appellant apprehends they were well satisfied with the said Decree) petitioned however, to have the said Cause re-heard, in order to delay the Appellant, and to postpone the Relief which he humbly hopes to have by his Appeal, and accordingly on the 26th and 27th Days of April 1727, the same was re-heard, and the Court was thereupon pleased to Affirm the said former Order and Decree, which said Orders and Decrees are (as the Appellant is advised) Erroneous, and ought to be Reversed, for the following, amongst other R E A S O N S ;

- I. For that it appears by the Testimony of the said James Canane and Owen Flannery, the Witnesses to the said fictitious Conveyance, that at the Time of the said fictitious or pretended Sale, they nor either of them had any Authority whatsoever, from the Respondent Daly, to purchase the said Lands, either in his Name or for his Use, nor was there one Shilling paid by the Respondent Daly in Consideration thereof, which plainly shews, it was set on Foot, in order to cover and secure the same from the Appellant.
- II. It is fully proved in the Cause, that the said Andrew Browne, for several Years after the said pretended Sale, received the Rents of the Premises, tho' the contrary is expressly denied by the Respondent Daly in his Answer, and by the express Words of the Act of Parliament, the Receipt of Rents, Issues or Profits, is in such Case, to be deemed a sufficient Evidence of a Trust.
- III. It is proved in the Cause, That the Respondent Daly often confessed the Trust for the said Andrew Browne, who being the real Owner of the Estate, notwithstanding the said Conveyance to the Respondent Daly, became Tenant for Life thereof only, upon the Appellant's Conformity to the Church of Ireland, by Virtue of the said Acts of Parliament.
- IV. The Appellant had likewise, by the said Marriage-Articles upon the Death of his said Father, an undoubted, equitable Right to the said Lands, which ought to have prevailed against the pretended Purchase of the Respondent Daly.
- V. That the Respondent the Lord Athunry purchased from the Respondent Daly, pending the said Suit in the Court of Chancery, and with Notice thereof.

WHEREFORE the Appellant humbly hopes, that the said Order and Decree of the 8th of February 1726, and the said Order made on the Re-hearing of this Cause, shall be Reversed, and that Your Lordships will Affirm the said Conditional Decree, or otherwise Relieve the Appellant in such Manner, as to Your Lordships shall seem meet.

C. TALBOT.

THO. LUTWYCHE.

Isidore Browne, Gent. - Appellant.

The Rt. Hon. Francis Lord
Baron of Athlunry of the
Kingdom of Ireland, and } Respondents.
Dennis Daly, Esq; -

The Appellant's CASE.

To be heard at the Bar of the House of
Lords, on Friday - the 25th Day of
April 1729

